IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No.1454 of 2007
In
Writ Petition No.5509 of 1998

Harishchandra M. Vaishya — Petitioner
Vs.
Habib Kassampunja Bhimani
since deceased through
Smt.Yasmeen A. Bhimani & ors. — Respondents

Ms.Sunita Sonawane i/b. Mr.M.R.Phal for petitioner.
Mr.A.T.Gade for proposed resp.nos.1 to 4.

CORAM: B.H.MARLAPALLE, J.

June 16, 2007.

P.C.

. This application is to bring on record the LRs of the deceased respondent Shri Habib Kassampunja Bhimani who died on 25/3/2004 at Mumbai. The affidavit of Pyarali Abdul Aziz Merchant has been placed on record by the proposed respondent no.1 in support of her contentions as set out in the affidavit-in-reply that the delay should not be condoned. The learned counsel for the respondents has also placed reliance on the decision in the case of Ram Nath Sao alias Ram Nath Sahu & ors. Vs. Gobardhan Sao & ors. **[(2002) 3 SCC 195]** and more particularly observations in para 12 therein. In short it is contended by the respondent no.1 that the petitioner and the deceased respondent being the

residents of the same village and their houses being separated by a mere distance of about 100 mtrs., it was possible for the petitioner to file this application within the stipulated period rather than waiting for more than two years. The respondent, therefore, claims that good and sufficient reasons have not been made out to condone the delay.

. It is seen from the Farad in the writ petition that after it was admitted on 23rd November 1998 and interim relief was granted on conditions to deposit the monthly rent of Rs.120/- regularly, taking into consideration the age of the deceased - respondent, the petition was directed to be expedited and by subsequent order dated 5/9/2003 the petition was directed to be listed on 24th September 2003.

. As per the applicant by letter dated 16/1/2006, Shri V.A. Gangal, the learned Advocate intimated him that the respondent died at Dahisar, Mumbai on 25/3/2004 and thereafter this application has been presented on 7/2/2007. Even then the application is beyond time undoubtedly at least by about one year.

. On the face of these peculiar circumstances, I hold that the delay deserves to be condoned but by levying costs.

. Hence delay condoned subject to payment of costs quantified at Rs.1000/- and to be remitted to the Maharashtra State Legal Services Authority within a period of two weeks from today.

. Civil Application is allowed in terms of prayer clause (c).

(B.H.MARL